

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMONT L. CALHOUN,  
Plaintiff,

v.

R. DELA CRUZ, et al.,  
Defendants.

No. 2:20-cv-2209 DB P

ORDER

Plaintiff, a state prisoner, proceeds pro se and seeks relief under 42 U.S.C. § 1983. Plaintiff's motion for an extension of time to complete discovery (ECF No. 38) and motion to compel under Rule 37 of the Federal Rule of Civil Procedure (ECF No. 36) are before the court.

**Motion to Compel**

Citing Federal Rule of Civil Procedure 37, plaintiff asks the court to compel the Office of the Attorney General and/or the California Public Records Act Coordinator to release to the U.S. Marshal the information needed to serve the two unserved defendants. (ECF No. 36.) In support of the motion, plaintiff states he made a Public Records Act request on January 10, 2022 and has not received the needed information. (*Id.* at 2.) Plaintiff attached to the motion a copy of his letter request dated January 10, 2022, along with the following response received from the CDCR Freedom of Information Coordinator:

////

1 CDCR does not exercise control over the records you are requesting.  
2 The records you seek may be in the possession of the California  
3 Department of State Hospitals. Please forward a copy to your request  
4 directly to the California Department of State Hospitals at the  
5 following address[.] (Id. at 5.)

6 In opposition to the motion to compel, defendants assert the motion is unsupported by  
7 relevant authority and plaintiff has not exhausted the means of determining the identities and  
8 service locations of Maganito and Wilridge ordered by the court. (ECF No. 37.) Defendants'  
9 response reaffirms the Attorney General has no additional information related to the identity or  
10 location of Maganito or Wilridge, as they state plaintiff was previously informed. (Id. at 4.)

11 In reply, plaintiff states he also wrote to the Department of State Hospitals as directed but  
12 did not receive a response. (See ECF No. 39 at 8.) He states he has therefore taken "adequate  
13 actions" to identify and serve Wilridge and Magnito as ordered by the court. (ECF No. 39 at 2.)

14 Plaintiff's motion asserts defendants are thwarting or stonewalling service of the two  
15 remaining defendants. (ECF No. 36 at 2.) However, plaintiff does not allege to have served any  
16 discovery requests under Rules 31, 33, 34 or 36 of the Federal Rules of Civil Procedure to the  
17 defendants in this case regarding the identification or location of the unserved defendants. In  
18 addition, as set forth, the CDCR Public Records Act Coordinator responded to plaintiff's request  
19 that CDCR did not have the desired information. Moreover, defendants' response to the motion to  
20 compel states the Office of the Attorney General has no additional information related to the  
21 identity or location of the two unserved defendants. Thus, the charge that defendants or their  
22 counsel are thwarting or stonewalling service of the remaining defendants appears to be based  
23 solely on plaintiff's speculation, which is not a basis for relief.

24 In reply to defendants' opposition, plaintiff additionally states he wrote to the Department  
25 of State Hospitals and received no response. (ECF No. 36 at 2.) To the extent plaintiff's request to  
26 the Department of State Hospitals was made under California's Public Records Act ("PRA"), the  
27 remedy for an alleged non-response lies in the state courts.

28 A challenge that the State of California or one of its departments has failed to respond to a  
PRA request or is withholding records under the PRA may be made in the state superior courts.  
See Cal. Gov't Code §§ 6258, 6259; Cty. of Santa Clara v. Superior Ct., 171 Cal. App. 4th 119,

1 127 (2009). Specifically, the PRA provides for the filing of a verified petition in the superior  
 2 court of the county in which the records are located. See Cal. Gov. Code, § 6258 (person seeking  
 3 to “enforce his or her right to inspect or to receive a copy of any public record or class of public  
 4 records” may seek injunctive relief, declarative relief, or a writ of mandate); Id. at 6259(a) (court  
 5 shall issue an order to disclose or show cause why not if “certain public records are being  
 6 improperly withheld from a member of the public”); Id. at 6259(b) (court shall order record made  
 7 public if refusal to disclose is not justified; court shall issue order supporting nondisclosure  
 8 decision if refusal to disclose is justified).

9 Neither the Department of State Hospitals nor the California Public Records Act  
 10 Coordinator is a party to this suit. No jurisdictional basis appears for the court to compel either  
 11 entity to take the action plaintiff requests. As plaintiff has not shown a basis for relief, the motion  
 12 to compel will be denied.

### 13 **Discovery and Dispositive Motion Schedule**

14 Plaintiff requests an extension of the discovery period by 45 to 65 days for the purpose of  
 15 completing discovery. (ECF No. 38.) Defendants filed a statement of non-opposition stating they  
 16 do not oppose plaintiff’s request for an extension of time. Defendants then state they do not  
 17 oppose an extension of 20 days, from June 17, 2022, to July 7, 2022. (ECF No. 40.) Good cause  
 18 appearing, plaintiff’s request will be granted in the manner set forth below.


### 19 **Conclusion and Order**

20 In accordance with the above, IT IS HEREBY ORDERED:

- 21 1. Plaintiff’s motion to compel (ECF No. 36) is denied without prejudice.
- 22 2. Plaintiff’s motion for extension of time, styled as a motion to stay or reschedule (ECF  
 23 No. 38) is granted as set forth:
  - 24 a. The parties may conduct discovery until August 1, 2022. Any motions  
 25 necessary to compel discovery shall be filed by that date. All requests for discovery pursuant to  
 26 Fed. R. Civ. P. 31, 33, 34 or 36 shall be served not later than sixty days prior to that date;
  - 27 b. All pretrial motions, except motions to compel discovery, shall be filed on or  
 28 before October 31, 2022;

c. In all other respects, the terms of discovery and scheduling order issued February 14, 2022 (ECF No. 35) remain in effect.

Dated: April 25, 2022

  
DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE

DLB7  
calh2209.36dso